

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH MARION HEAD,)
)
Petitioner,)
)
v.) Civil Action No. 04CV40042RGS
)
DAVID L. WINN, WARDEN)
)
Respondent.)
)

**RESPONDENT'S MOTION TO DISMISS PETITIONER'S PETITION PURSUANT TO
FED. R. CIV. P. 12(b)**

The respondent, David L. Winn, Warden of the Federal Medical Center, Devens, Massachusetts, ("FMC Devens"), hereby moves to dismiss the habeas petition of petitioner Joseph Marion Head, for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

DEFENDANT DAVID L. WINN,
WARDEN, FMC DEVENS,

By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

By:

Gina Walcott-Torres
Gina Y. Walcott-Torres
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

CERTIFICATE OF SERVICE

This is to certify that I have this 14th day of July 2004, served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

Joseph Marion Head (#17549-056), *pro se*, P.O. Box 879, Ayer, MA 01432

Gina Walcott-Torres

Gina Y. Walcott-Torres

Assistant United States Attorney

REQUEST FOR WAIVER OF LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned counsel hereby requests a waiver of the requirements of Local Rule 7.1(A)(2). As reasons therefore, she asserts that the plaintiff, who is acting *pro se*, is incarcerated at the Federal Medical Center in Devens, Massachusetts.

Gina Walcott-Torres

Gina Y. Walcott-Torres

Assistant United States Attorney